

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KATE MCLELLAN, et al.,
Plaintiffs,
v.
FITBIT, INC.,
Defendant.

Case No. [3:16-cv-00036-JD](#)

**ORDER RE ADMINISTRATIVE
MOTION TO SEAL**

Re: Dkt. No. 79

This order resolves a pending administrative motion to file a document under seal. Dkt. No. 79. The motion is denied.

The motion was filed in connection with a non-dispositive discovery dispute. Dkt. Nos. 73, 76. In our circuit, documents filed in connection with non-dispositive motions may be sealed so long as the party seeking sealing makes a “particularized showing” under the “good cause” standard of Federal Rule of Civil Procedure 26(c). *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006) (quoting *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1138 (9th Cir. 2003)). In addition, in our district, all parties requesting sealing must comply with Civil Local Rule 79-5, including that rule’s requirement that the request must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law,” *i.e.*, is “sealable.” Civil L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

Fitbit has failed to establish that any of the information contained in the privilege log is entitled to protection under the law. Fitbit does not contend that the information is privileged, and the assertion that the information contained in the log is “non-public,” “sensitive,” and “treated as confidential in the ordinary course of Fitbit’s business,” without more, does not make

1 that information sealable. In addition, Fitbit's request to file the entire document under seal is
2 plainly not "narrowly tailored to seek sealing only of sealable material." Civil L.R. 79-5(b).

3 The motion is denied. The parties should file an unredacted version of the privilege log
4 within 7 days of this order.

5 **IT IS SO ORDERED.**

6 Dated: August 4, 2017

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10 JAMES DONATO
11 United States District Judge
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